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CIVIL AND POLITICAL RIGHTS

The incompatibility between democracy and racism

Report of the High Commissioner for Human Rights submitted in accordance with Commission resolution 2001/43

I. INTRODUCTION

1. The present report is submitted pursuant to Commission on Human Rights resolution 2001/43, in which the Commission invited the High Commissioner for Human Rights to present to the Commission at its fifty-eighth session an analytical report on the main trends and governmental policies regarding the incompatibility between democracy and racism, especially on the development process of political parties with racist platforms, as well as actions to counter such trends.

2. The report contains three main sections. Part I explores the relationship between democracy and racism, racial discrimination, xenophobia and related intolerance. It first looks at democracy as a fundamental value which may be challenged by racism, racial discrimination, xenophobia and related intolerance. It then briefly deals with the need to protect and strengthen democracy in order to combat racism and related intolerance, and examines the legal framework protecting and promoting democracy against racism. Part II broadly identifies current trends in racism, xenophobia and related intolerance which threaten democracy, and includes a subsection on political parties with racist platforms. Part III looks at actions to counter the negative impacts of racism on democracy.

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3. The Office of the High Commissioner for Human Rights received five responses to its request to Governments for information concerning the subject of the report. Information contained therein is reflected in Part III of this report. The full text of all replies can be consulted in the files of the secretariat.

II. THE RELATIONSHIP BETWEEN DEMOCRACY AND RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

A. Democracy as a fundamental value which may be challenged by and needs to be protected against racism

4. Democracy is commonly recognized as a basic form of organization of contemporary societies and as one of the fundamental values of modern times. Its underlying principle is the recognition of the equal dignity and worth of every human being. The 1993 World Conference on Human Rights linked democracy with other basic values and stated that "[d]emocracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives". The interpretation of the other values as human-centred development and as universal, indivisible, interdependent and interrelated human rights leaves no doubt that the World Conference spoke on a substantive and not only formal concept of democracy. The Human Development Report 2000 reflects, notably in chapter 3, a widely supported view that democracy is the only form of political order in the framework of which all human rights could be guaranteed.[1] The 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance reiterated that democracy is essential for the effective prevention and elimination of racism and related intolerance.

5. The Commission on Human Rights has reaffirmed that, while there is no one universal model of democracy, popular participation, equity, social justice and non-discrimination are democracy's essential foundations. It stressed that the consolidation of democracy requires the promotion and protection of all civil, cultural, economic, political and social rights, including the right to development, sustained economic growth and sustainable development of countries and communities. The Commission has called on States to strengthen democracy, inter alia through promoting pluralism and the participation of individuals in decision-making, developing competent public institutions, including an independent judiciary and effective and accountable legislature and public service, and developing an electoral system which ensures periodic, free and fair elections. Further, it called on States to foster a democracy that promotes people's welfare, rejecting all forms of discrimination and exclusion, strengthens good governance practices, and enhances social cohesion and solidarity.[2]

6. Substantive democracy, as the Commission on Human Rights sees it, needs to be based on human rights and fundamental freedoms for all human beings. Otherwise, it would be reduced to formal processes and techniques. While democracy is premissed on inclusion, participation and choice, racism and xenophobia restrict, discriminate and exclude. Democracy is based on accountability and responsibility of all involved while racism and xenophobia are defined by arbitrariness and contempt for others. All of the basic manifestations of racism and

xenophobia are incompatible with democracy because they essentially contradict equal dignity of people, equal participation in community life and equal protection of human rights. They disenfranchise individuals and groups and, by their very nature, threaten democratic values and the democratic fabric of society, destabilizing relations amongst individuals and groups.[3]

7. Democracy, as one of the basic values of contemporary societies, needs to be protected against racism and xenophobia, which challenge its core content. By the same token, democracy needs to be recognized as one of the fundamental tools for countering these evils.

B. Strengthening democracy as an effective tool to combat racism

8. To fulfil its promise, democracy must be inclusive. Its mechanisms and procedures need to fully incorporate women, minorities, indigenous peoples, migrant workers and other groups whose rights and interests require promotion and protection. The Human Development Report 2000 distinguished two broad models of democracy - majoritarian and inclusive - and explored why inclusive democracy is more conducive to promoting and protecting human rights than democracy narrowed to majoritarian rule. This is mainly due to the fact that many minorities in pluralistic societies find themselves permanently excluded because of their limited ability to impact on the electoral prospects of majority-based political parties. As a consequence, it happens that tensions or even open conflicts sometimes become a characteristic of societies that hold elections and follow other democratic procedures. This is a new manifestation of the classical dilemma "majority rule versus minority rights", the resolution of which consists in the combination of the democratic process of decision-making, respect of the rights of persons belonging to minorities, and policies ensuring an inclusive organization of society.

9. Inclusive democracies, based on mutual respect and tolerance, are a vehicle for societies to effectively resist racism and xenophobia. They are essential in this respect precisely because these scourges often result from discrimination, exclusion and marginalization. Inclusive democracies are premissed on the principles of participation and power sharing, on recognizing and respecting diversity, on including minorities in democratic processes and institutions, and on the rule of law. They create the space and procedures for the protection of all parts of society. Finally, they incorporate human rights in social and economic policy-making and thus help to address destructive inequalities in different areas of life.

10. Since the 1993 World Conference on Human Rights, the international community has paid increasing attention to democracy as a guarantor of human rights and development. Most recently, in the Millennium Declaration States pledged to promote democracy and strengthen the rule of law, and to strengthen the capacity of all countries to implement the principles and practices of democracy and respect for human rights. The work of the Commission on Human Rights has contributed to a wider understanding of the various elements of democracy and its interdependence with human rights. Commission resolutions 2000/47, "Promoting and consolidating democracy" and 2001/36, "Strengthening of popular participation, equity, social justice and non-discrimination as essential foundations of democracy" together provide a broad roadmap of principles and practices to strengthen democracy.

C. Legal framework protecting and promoting democracy against racism

11. All of the basic elements of democracy are protected by the international human rights standards, and non-discrimination is an overarching principle in international law. According to Article 1, paragraph 3, of the Charter of the United Nations, one of the main purposes of the United Nations is to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". The Universal Declaration of Human Rights states that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". This principle is also common to each of the core international human rights treaties.

12. Article 21 of the Universal Declaration sets the basis for a democratic order by declaring that the will of the people shall be the basis of the authority of government, expressed through genuine and periodic elections. It proclaims the right to take part in government and to equal access to public service. Article 25 of the International Covenant on Civil and Political Rights guarantees the right of every citizen, without any of the distinctions mentioned in article 2 of the Covenant, to take part in the conduct of public affairs, to vote and to be elected at genuine periodic elections, and to have access to public service.[4] Other rights essential for political participation - freedom of opinion and expression, the right to peaceful assembly and association, and freedom of thought, conscience and religion - are also protected by the Universal Declaration and the International Covenant on Civil and Political Rights (ICCPR).[5] They should inter alia allow for the free promotion of political programmes and ideas, the manifestation of an individual's own convictions, and the mobilization of social support. Effective political participation in the conduct of public affairs requires the free flow of information and ideas among citizens, candidates and elected officials. Democratic practice is grounded in the protection and exercise of human rights and fundamental freedoms.

13. Does this mean, however, that the promotion of racist ideas should be protected in the framework of a democratic order and its underlying human rights standards? Should the protection of democratic freedoms prevail over the need to effectively counter public dissemination of racist ideas? Although these questions sound rhetorical, they pose a real dilemma in the view of many. The law in several countries does not prohibit organizations or the publication of materials promoting racist ideas. Moreover, reports submitted to treaty-monitoring bodies indicate that some Governments refer to the incompatibility with certain fundamental freedoms of bans on movements based on racist concepts or prohibitions of the promotion of such concepts. However, the provisions of the Universal Declaration and the International Covenant on Civil and Political Rights allow for limitations to be imposed on some human rights, which are also relevant in the context being discussed, if this is necessary to protect the legitimate interests of society or the human rights of other persons.[6] In the context of countering racism international law goes even further, establishing the clear responsibility of States to take appropriate action, including the prohibition of some activities. The International Convention on the Elimination of All Forms of Racial Discrimination, which has been ratified by 161 countries, clearly imposes on the States parties the obligation to condemn "all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to

eradicate all incitement to, or acts of, such discrimination" (art. 4). The Convention further demands that the States parties "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof"(art. 4 (a)). The States parties should "declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law" (art. 4 (b)).

14. The Committee on the Elimination of Racial Discrimination in its general recommendations VII and XV reiterated that these provisions are of a mandatory character. Under these provisions, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced. The Committee recalled that article 4 of the Convention requires States parties to penalize four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts. The Committee also clearly stated that in its opinion, "the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression".[7] The Committee drew the attention of States parties to article 20 of the ICCPR, according to which any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In the context of the view of some States that in their legal order it is inappropriate to declare illegal an organization before its members have promoted or incited racial discrimination, the Committee reiterated its position that such "organizations, as well as organized and other propaganda activities, have to be declared illegal and prohibited. Participation in these organizations is, of itself, to be punished".[8]

15. The International Covenant on Civil and Political Rights, in article 20, paragraph 2, lays down that "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". In its general comment No. 11, the Human Rights Committee takes the same approach as the Committee on the Elimination of Racial Discrimination by saying that prohibitions required by article 20 "are fully compatible with the right of freedom of expression as contained in article 19, the exercise of which carries with it special duties and responsibilities ...". In the view of the Committee, article 20 (2) "is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned. ... For article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation".

16. Finally, it must be stressed that the participants in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at Durban recalled that "the dissemination of all ideas based upon racial superiority or hatred shall be declared an offence punishable by law with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination".[9]

17. In view of the above, democratic rights and freedoms cannot justifiably be invoked to protect dissemination of ideas based on racial superiority or hatred since these ideas engender harm and negatively impact on the human rights and freedoms of the individuals or groups against whom they are directed. Although political platforms are central to electoral processes, platforms based on racist and xenophobic ideas are incompatible with democracy because they challenge what democracy aims to protect - the dignity and worth of the human person, and the rights and freedoms of individuals and groups. Even in democratic societies, politicians and political parties cannot be said to remain within a democratic framework if they endeavour to win votes by demonizing a section of the population or if their platforms are based on dehumanizing ideals.

III. CURRENT TRENDS IN RACISM, XENOPHOBIA AND RELATED INTOLERANCE WHICH THREATEN DEMOCRACY

A. Scale, contemporary manifestations and dynamics of the problem

18. Notwithstanding that non-discrimination is a fundamental principle of international law, discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, or other status persists in almost every country in the world. Over the last five years, the reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have looked at occurrences of racism, racial discrimination, xenophobia and related intolerance against Blacks, Arabs, Muslims, Jews, Roma, immigrants and migrant workers. The Special Rapporteur has paid particular attention to the activities of neo-Nazi and skinhead organizations, and to the use of the Internet as a means to disseminate and incite racial hatred.[10] He has identified certain recurring situations which are incompatible with democracy. His reports focus in particular on racist attitudes and negative stereotyping of certain groups which lead to their exclusion and marginalization, and contribute to and perpetuate inequalities in general. Members of the affected groups are specially vulnerable to violations of their personal security and to discrimination in the administration of justice. They also suffer discrimination in housing, education and employment and are the subjects of defamation in the media and the objects of hatred on the Internet. The Special Rapporteur has identified continuing instances of religious intolerance, including the destruction of religious symbols and places of worship. He has noted that it is difficult to separate acts of racial discrimination from acts of religious intolerance, as each may reinforce or encourage the other. Regarding immigrants and migrant workers, the Special Rapporteur has stated that all over the world, immigrants have become easy scapegoats and sacrificial victims of economic crises or insecurity. They are often held responsible for all the ills in society. In some cases, they are subjected to harsh legislative and institutional difficulties in addition to racist and xenophobic remarks and acts.

19. The Special Rapporteur has continuously drawn attention to numerous occurrences of racist and xenophobic propaganda on the Internet. It will be recalled that the Seminar on the role of the Internet with regard to the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, organized by OHCHR in 1997 in the framework of the Third Decade to Combat Racism and Racial Discrimination, acknowledged that the major challenge for the international community today is how to avoid restrictions on the freedom of expression, while continuing to provide proper legal protection to the rights of groups and

individuals who are affected by the increasing dissemination of racist and xenophobic material on the Internet. During one of the five regional expert seminars in preparation for the Durban World Conference, organized by OHCHR, it was noted that in some countries racist and hate speech are protected by the right to freedom of speech and are therefore allowed to be posted on the Internet. In other countries, even though hate speech is regarded as a criminal offence, it is not possible for the perpetrators to be prosecuted since the web postings originate from countries which do not forbid it and the perpetrators benefit from legal provisions guaranteeing freedom of speech. The decentralized nature of the Internet makes it difficult to eliminate such activities.

20. The aforementioned regional expert seminars had the overarching theme of "Trends, priorities, and obstacles in combating racism and racial discrimination". The reports of the seminars reveal disturbing trends in each of the host regions, which relate variously to discrimination against indigenous communities, minorities, migrants, refugees and asylum-seekers. In several of the expert seminars, discrimination against migrants was of particular concern. In addition, discrimination on the basis of race, ethnicity, social and economic status, religion and political status are present to varying degrees in each of these regions.[11]

B. The case of political parties with racist platforms

21. Political parties bear particular responsibility for strengthening democracy and countering threats to it, including racism. Pursuant to Commission resolution 2000/14, the Special Rapporteur prepared a study on the issue of political platforms which promote or incite racial discrimination.[12] In the study, the Special Rapporteur noted that during the last decade, extreme-right, racist political parties and organizations have become increasingly popular and influential in several parts of the world.[13] In the view of the Special Rapporteur, their increased popularity is attributable to economic problems, globalization and immigration. In some cases, in order to attract voters who are fearful of losing their status in society, extreme-right parties portray immigrant and minority populations as opportunists who drain welfare and are incapable of integration. In other cases, political parties base their ideology on neo-Nazism, ultranationalism and racial superiority. Indigenous populations, immigrants and refugees have all been targets of negative political speech and multiculturalism is often portrayed as a threat rather than a benefit to the societies concerned.

22. The Special Rapporteur noted that international law is clear on the need to prohibit organizations that incite racial hatred. He pointed out that despite the clarity of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, many States parties have made declarations and entered reservations with respect to it, in effect limiting its implementation at the national level.[14] The Special Rapporteur reiterated that a refusal to prohibit organizations and political parties that practise incitement to racial discrimination is no argument for democracy, but, quite the contrary, creates a democratic paradox by protecting organizations that frequently endanger the very foundations of democracy.

23. The Durban World Conference expressed concern that racial and xenophobic programmes are regaining political, moral and even legal recognition in many ways, including through some political parties and organizations. It condemned political platforms and organizations based on racism or xenophobia as incompatible with democratic, transparent and

accountable governance. The Conference also reaffirmed that racism, racial discrimination, xenophobia and related intolerance condoned by governmental policies violate human rights and may endanger friendly relations among peoples, cooperation among nations, and international peace and security.

24. The Conference underlined the key role that politicians can play in combating the scourges of racism, xenophobia and related intolerance. It encouraged political parties to take concrete steps to promote equality, solidarity and non-discrimination. It is in the spirit of this Conference to stress that politicians have the responsibility to refrain from making provocative remarks that could lead to racial or other discrimination. They cannot justifiably capitalize on racist or xenophobic trends in public opinion or society for electoral gain, and cannot legitimately be said to be upholding the ideals of democracy if they ostracize or demonize vulnerable groups. On the other hand, they have a positive obligation to make strong public statements against racist, xenophobic and related intolerance since silence on their part creates a vacuum in which racism and related intolerance can fester. The Conference called on political parties and organizations to develop voluntary codes of conduct, accompanied by internal disciplinary measures for violations, to discourage members of political parties from making public statements and engaging in actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance.

IV. ACTIONS TO COUNTER THE NEGATIVE IMPACTS ON DEMOCRACY OF RACISM, XENOPHOBIA AND RELATED INTOLERANCE

A. Steps at the country level to counter racism, xenophobia and related intolerance

25. The Government of Argentina reported that as a result of the 1994 constitutional reform, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was accorded constitutional rank and therefore takes precedence over other international treaties without such status and over national and provincial legislation. Several decisions of the Supreme Court had confirmed this legal superiority. A 1995 act created the National Institute against Discrimination, Xenophobia and Racism to prepare national policies and specific actions to combat these phenomena. The State had also submitted all reports due to the Committee on the Elimination of Racial Discrimination and the declaration under article 14 of the Convention permitting individual communications, was being prepared. The Constitution provides for political parties to act freely but with respect for the provisions of the Constitution and thus of the main international human rights instruments, including ICERD. Article 4 of ICERD had become enforceable in November 1988 when a law imposing penalties on illegal and criminal acts which incite discrimination was adopted. This law was incorporated into the Penal Code and binds all individuals and organizations, including political parties. Article 3 of the 1988 law provides penalties ranging from one month to three years of imprisonment for persons belonging to organizations which or who engage in propaganda based on ideas or theories of racial or other superiority aimed at justifying or promoting racial and religious discrimination. The same penalty is applicable to those who encourage or incite persecution or hatred on racial, religious or other grounds.

26. The Government of Cuba noted that it attaches particular importance to the implementation of Commission resolution 2001/43 in the firm belief that democracy and racism are totally incompatible. The process of political and socio-economic change since 1959 has deep anti-racist roots. The right of all persons to equality before the law and in the enjoyment of their rights is guaranteed by the Constitution and laws, and must be respected by all State and public authorities. Racial discrimination in all forms is prohibited. The Criminal Code makes discrimination or the promotion or incitement of discrimination based on sex, race, colour or national origin punishable by imprisonment or fine. This includes disseminating ideas based on racial superiority or hatred or incitement to acts of violence against any race or group of persons of another colour or ethnic origin. The Associations Act (No. 54), governing the exercise of the right of association, forbids the establishment of racist or segregationist associations. Only associations whose objectives are compatible with the principles of friendship, solidarity and equality among human beings will be authorized. The Criminal Code punishes offences against freedom of opinion, freedom of worship, and against the rights of assembly and association and the right to demonstrate. Access to social services, including education and health, is guaranteed to all citizens without discrimination or restriction of any kind. Teaching, education, culture and information are aimed at building friendship and solidarity between individuals and peoples. In addition, the response of the Government of Cuba also addresses the international dimensions of combating racism, racial discrimination, xenophobia and related intolerance and examine some obstacles that are apparent at that level. Commenting on important steps to consolidate democracy and eradicate racism, the reply refers to a new economic order; universal ratification of the International Convention on the Elimination of All Forms of Racial Discrimination; withdrawal of reservations to article 4 of the Convention and consolidation of the universal prohibition of racist propaganda and associations; and development of positive discrimination programmes to the benefit of vulnerable groups.

27. The Government of Georgia explained that the establishment and activities of political parties in Georgia are regulated by the Basic Law on Political Union of Citizens. The right to membership of the political parties existing in Georgia is reserved for Georgian citizens (articles 5 and 8 of the Law) and has no restrictions on the basis of race (art. 11). According to the Law, the formation and activities of a party whose goal is, inter alia, to advocate war and violence or arouse national, local, religious or social enmity shall be prohibited (art. 5). Only the Constitutional Court can prohibit a party (art. 35). In accordance with the Law on the Constitutional Court, the President of Georgia, not less than one fifth of the members of the Georgian Parliament, and the supreme state bodies of Abkhazia and Adjara have the right to submit a request for the prohibition of a party (art. 35). The Government of Georgia stated that additional information relating to the question under discussion may be found in the initial report of Georgia on the implementation of ICERD (CERD/C/369/Add.1, paras. 182, 186 and 189).

28. The Government of Guatemala reported on steps taken in the field of education, participation, and human and social development. The State had initiated a process of educational reform aiming to eradicate the discriminatory contents, strengthen and promote bilingual and intercultural education, and incorporate contents which favour national unity and respect for cultural diversity. There is a bill before the Congress for the reform of the law on the electoral system and political parties. This reform will lay the groundwork for major social and political participation by certain sectors of the society, such as the indigenous population who are traditionally excluded from the decision-making process. Another bill aims at the reform of the

national system of Councils for Rural and Urban Development. In this regard, the new Law on Development Councils, to be approved by the Congress, includes elements aiming at, inter alia, significant involvement of the population, including indigenous groups, in the design and implementation of development programmes; the recognition of the multicultural and multilingual reality of Guatemala; and the effective participation of local communities in the design, prioritization and resolution of problems. New laws to reform the Municipal Code and the Law on Community Communication, expected to come into force during 2002, include provisions for strengthening the participation of indigenous groups at the municipal level, and their contribution to development, democracy and a culture of peace.

29. The Government of Turkey stated that the principle of respect for human rights is among the fundamental characteristics of the Republic of Turkey. Article 10 of the Constitution guarantees to all individuals equality before the law, without discrimination on any basis. Further, no privilege can be granted to any individual, family, group or class. Political parties are regulated by law according to the relevant provisions of the Constitution. According to articles 68 and 69, political parties shall not conflict with, inter alia, the independence of the State, human rights, the principles of equality and the rule of law, and shall not aim to protect or establish any form of dictatorship, nor to incite citizens to crime. The Constitutional Court can decide to dissolve political parties when it is established that these provisions have been violated. The activities, internal regulations and operation of political parties must be in line with democratic principles. According to the law on political parties, they shall not have racist aims nor conduct activities to that end, or be in conflict with the principle of equality before the law. The Penal Code provides that those who incite people to hatred and enmity on the grounds of class, race, religion and sect, or regional difference shall be punished.

30. The Committee on the Elimination of Racial Discrimination, in recent concluding observations on States parties' reports, has pointed to several instances where international instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination, form part of or take precedence over domestic law, and can be invoked directly before the courts. The Committee has also pointed to the establishment of various institutions and programmes for the promotion and protection of human rights. Regarding implementation of article 4 of the Convention, the Committee has noted several instances when States parties have taken positive actions. In one case, the Committee noted that following actions by a State party, more extreme right-wing associations had been banned. It noted that measures taken by the same State party to combat racial propaganda were being effectively implemented, leading to the conviction by judicial authorities of approximately 900 people in a particular year. In another instance, a State party was commended for the amendment of its Criminal Code making racial discrimination a specific crime. In yet another case, the Committee expressed satisfaction at the amendment of a certain law criminalizing acts mentioned in article 4 of the Convention; as a result of this amendment, it was no longer necessary for incitement to racial hatred to be intentional in order for the offence to be committed. The Committee cited as a positive aspect a number of provisions in the domestic legislation of another State party, in particular specific articles of the Constitution and Criminal Code, and the provisions of the National Minorities Act, prohibiting the dissemination of racial and ethnic hate propaganda and the creation of organizations and political parties that are based on racial hatred or discrimination. The Committee also noted that a certain Government had acted systematically to suppress speech and publications likely to incite racial hatred.[15]

31. In many instances, national institutions and ombudsmen have played an important role in the protection of victims of human rights violations. In one case, the national institution cooperated with the Government in the preparation of equality legislation, undertook national surveys on discrimination and integration in schools and racism in the media. The institution had also been involved in a public awareness campaign on immigration and refugee policy, and was planning to undertake education and training in human rights.[16]

B. Proposals approved by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

32. The Durban World Conference addressed several aspects of the incompatibility of racism, racial democracy, xenophobia and related intolerance with democracy. Its recommendations are summarized below under the following headings: law and policy; public institutions; civil society; media and education.

33. Law and policy. The Conference stated that the obstacles to overcoming racial discrimination and achieving racial equality lie mainly in the lack of political will, weak legislation and lack of implementation strategies and concrete action by States, as well as the prevalence of racist attitudes and negative stereotyping. The Conference urged universal ratification of ICERD by 2005 and the withdrawal of all reservations. It also recommended several national-level legislative, judicial, regulatory, administrative and other measures to prevent and protect against racism, racial discrimination, xenophobia and related intolerance. These include adopting (a) constitutional, legislative and administrative measures to foster equality, including reviewing, amending and repealing national legislation and administrative provisions that may give rise to discrimination; (b) national policies, action plans, legislation and administrative measures to combat racism, racial discrimination, xenophobia and related intolerance; (c) legislative and administrative policies and other preventive measures to protect certain groups of workers; (d) effective policies and programmes to prevent and ensure accountability for misconduct by police and other law enforcement personnel including prosecuting perpetrators of such misconduct; and (e) measures to end racial profiling.

34. The Conference also recommended policies and action plans, including affirmative action, to ensure non-discrimination, in particular as regards access to social services, employment, housing, education and health care. It called for better protection of the rights of workers who are subject to racism, racial discrimination, xenophobia and related intolerance through enhanced enforcement of legislation, public education and communications in the workplace, and urged States to eliminate disparities in health status, including by improving the health status of marginalized communities. The Conference recognized the importance of equal participation without discrimination in political, economic, social and cultural decision-making.

35. Public institutions which enable disagreements to be resolved through dialogue are also crucial in ensuring the protection of the rights of vulnerable groups. The Conference recommended the establishment or reinforcement where they already exist, of independent national institutions to combat racism, racial discrimination, xenophobia and related intolerance, and to provide assistance to victims.

36. Civil society. The Conference also recognized the fundamental role of civil society in the fight against racism, racial discrimination, xenophobia and related intolerance and in promoting the public interest. It recognized the contribution of non-governmental organizations to promoting human rights education and raising awareness about these phenomena. It also noted that promoting greater respect and trust among different groups within society must be a shared but differentiated responsibility of government institutions, political leaders, grass-roots organizations and citizens.

37. Media. Whether audio-visual, electronic or print, the media play an important role in democratic societies. While recognizing the media's positive contribution to the fight against racism, racial discrimination, xenophobia and related intolerance, the World Conference noted with regret that certain media, by promoting false images and negative stereotypes of vulnerable groups and individuals, particularly of migrants and refugees, have contributed to the spread of xenophobic and racist sentiments among the public and in some cases have encouraged violence by racist individuals and groups. Of particular concern to the World Conference was the use of the Internet for propagating racism, racial hatred, xenophobia, racial discrimination and related intolerance. The Conference also noted that children and youth having access to hate sites could be negatively influenced. It urged States, inter alia, to consider the following measures while taking steps to ensure freedom of opinion and expression: (a) to encourage Internet service providers to develop voluntary ethical codes of conduct and self-regulatory measures to protect against the dissemination of racist, xenophobic and other intolerance ideas; (b) to enact and implement appropriate legislation to prosecute those who use information and communications technologies to incite racial hatred or violence; (c) to use and strengthen international cooperation to respond to the rapidly evolving phenomenon of dissemination of hate speech and racist material through these media; and (d) to examine ways that the positive contribution made by these technologies can be enhanced through replication of good practices in combating racism, racial discrimination, xenophobia and related intolerance.

38. Education. The importance of education in creating awareness and promoting respect and tolerance to prevent and combat racism, racial discrimination, xenophobia and related intolerance cannot be overstated. It is worth recalling that article 13 of the International Covenant on Economic, Social and Cultural Rights states that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen respect for human rights and fundamental freedoms. It shall enable all persons to participate effectively in a free society, and promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups. Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination commits States parties to "adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups ...". The Durban World Conference re-emphasized not only the importance of access to education without discrimination, but also the role of human rights education in countering racism, racial discrimination, xenophobia and related intolerance and promoting better understanding amongst all cultures and civilizations.

V. CONCLUSIONS

39. Today, discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status persists in almost every country in the world. The Durban World Conference represented a renewed commitment to fight against the scourges of racism, racial discrimination, xenophobia and related intolerance. Its Declaration and Programme of Action offer a solid roadmap for future actions in the fight against racism, racial discrimination, xenophobia and related intolerance. These documents, coupled with the will to struggle for justice and equality, can greatly contribute to effective implementation of all human rights for all and to the building of inclusive democracies.

40. Democracy and the fight against racism are inseparable. Needless to say, any limitation of democratic freedoms is a very delicate issue and should be undertaken in full accordance with international law, including the human rights standards. We must however always be aware of the threat of arbitrariness. Those exposed to the threat of racism, and those who could be excluded or discriminated against on the basis of their origin must be effectively protected. Moreover, respect for human rights requires that appropriate preventive measures against racism, racial discrimination, xenophobia and related intolerance be taken. Express safeguards to protect vulnerable groups, including women, minorities, indigenous peoples, migrant workers or other domestically marginalized groups are essential. Democracy is based on the will of the majority, yet it seeks not to sacrifice the minority. It favours equality while recognizing that difference and diversity should be welcomed and protected. It seeks to protect the rights of the individual without neglecting the general welfare. Democratic States must guarantee the conditions for people of all cultures, ethnicities and religions to pursue their distinctive ways of life. Equally important, continuous efforts need to be made to remove obstacles which hinder groups or sectors of the population from exercising their voice or participating on an equal basis with others in conducting community affairs. Democracy is incompatible with racism, xenophobia and related intolerance: accepting its core values - freedom, tolerance and participation - one must reject these evils.

Notes

[1] Vienna Declaration and Programme of Action (A/CONF.157/23), Part I, para. 8.

[2] See Commission resolutions 2000/47 and 2001/36.

[3] The preamble to the International Convention on the Elimination of All Forms of Racial Discrimination states: "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and there is no justification for racial discrimination, in theory or in practice, anywhere". Its article 1 defines racial discrimination as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".

[4] See Human Rights Committee, general comment No. 25, in HRI/GEN/1/Rev.5.

[5] See articles 18, 19, 21 and 22 of the ICCPR.

[6] In the case of freedom of speech and the right to information (article 19 of the ICCPR), restrictions which are necessary for respect of the rights or reputations of others, for the protection of national security or of public order (ordre public), or of public health or morals are admissible. Similarly, the right of peaceful assembly (article 21 of the ICCPR) and the right to freedom of association (article 22 of the ICCPR) may be restricted only for the purpose of respecting the rights and freedoms of others, and of ensuring morality, public order and the general welfare in a democratic society. The right to take part in the conduct of public affairs (article 25 of the ICCPR) cannot be subjected to unreasonable restrictions. All these provisions reflect an attempt to strike a balance between legitimate interests of the society or other individuals and the individual's rights and freedoms. Human rights law requires that only necessary and proportionate restrictions can be imposed on the human rights laid down in the ICCPR. The scope of these limitations should not be interpreted in such a way as to jeopardize the essence of the right concerned. On the contrary, they should be interpreted strictly in favour of the rights at issue. Any limitations should also be compatible with the objects and purposes of the Covenant and must not be arbitrarily applied. The burden of justifying a limitation under any Covenant right lies with the State (cf. general comment No. 29 adopted by the Human Rights Committee, in HRI/GEN/1/Rev.5).

[7] General recommendation No. XV, para. 4, in HRI/GEN/1/Rev.5.

[8] Ibid., para. 6.

[9] A/CONF.189/12, chap. I, Declaration, para. 86.

[10] See E/CN.4/1997/71, E/CN.4/1998/79, E/CN.4/2000/16 and Add.1, E/CN.4/2002/21.

[11] The reports of the seminars can be found on the World Conference against Racism page of the OHCHR web site.

[12] A/CONF.189/PC.2/21.

[13] Extreme-right organizations include ultranationalists, neo-Nazis, neo-fascists and skinheads.

[14] See also paragraphs 57-61 of the report.

[15] See reports of the Convention on the Elimination of All Forms of Racial Discrimination to the fifty-fifth and fifty-sixth sessions of the General Assembly (A/55/18 and A/56/18)

[16] See A/CONF.189/PC.1/8.